

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

S4 07 Cr. 387 (CM)

RAFAEL RODRIGUEZ, :

a/k/a "Dance," :

ANGEL DIAZ, :

a/k/a "Pete," :

VICTOR DIAZ, :

a/k/a "Gago," and :

JORGE CEDENO, :

a/k/a "Miguel," :

Defendants. :

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GOVERNMENT'S PROPOSED EXAMINATION OF PROSPECTIVE JURORS

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- Of Counsel -

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In accordance with Rule 24(a) of the Federal Rules of Criminal Procedure, the Government respectfully requests that the Court include the following questions in its examination of prospective jurors.

The Charges

1. This is a criminal case. There are four defendants in the case, RAFAEL RODRIGUEZ, a/k/a "Dance," ANGEL DIAZ, a/k/a "Pete," VICTOR DIAZ, a/k/a "Gago," and JORGE CEDENO, a/k/a "Miguel." The defendants have been charged in an indictment with violating certain federal laws. The indictment was filed by a grand jury sitting in this district.

2. The indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I would like to summarize the charges in this case in order to determine

whether there is anything about the nature of this case that may make it difficult or inappropriate for any of you to serve on the jury.

3. Count One charges that from in or about September 2006 through on or about January 3, 2007, RAFAEL RODRIGUEZ, ANGEL DIAZ, VICTOR DIAZ, and JORGE CEDENO, the defendants, conspired – which means they agreed – among themselves and with other people to kidnap certain individuals and transport those individuals over state lines. Count Two charges RAFAEL RODRIGUEZ, ANGEL DIAZ, and VICTOR DIAZ with participating in the actual kidnapping of two individuals in or around Blauvelt, New York, and transporting them to in or around Clifton, New Jersey. Count Three charges RAFAEL RODRIGUEZ and JORGE CEDENO with participating in the actual kidnapping of an individual in or around Allamuchy Township, New Jersey and transporting that individual to in or around the Bronx, New York. Count Four charges that RAFAEL RODRIGUEZ, ANGEL DIAZ, VICTOR DIAZ, and JORGE CEDENO conspired – that is, agreed – among themselves and with other people to commit several armed robberies of trucks from in or about September 2006 through on or about January 3, 2007. Count Five charges RAFAEL RODRIGUEZ, ANGEL DIAZ, and VICTOR DIAZ with participating in the actual armed robbery of two individuals of their tractor trailer in or around Blauvelt, New York. Count Six charges RAFAEL RODRIGUEZ and JORGE CEDENO with participating in the actual armed robbery of an individual of a tractor trailer

in or around Allamuchy Township, New Jersey. Count Seven charges that RAFAEL RODRIGUEZ and ANGEL DIAZ used, carried, and possessed firearms in relation to the conspiracies, kidnapping, and armed robbery charged in Counts One, Two, Four, and Five, and that they brandished those firearms in connection with those crimes. Count Eight charges that RAFAEL RODRIGUEZ and JORGE CEDENO used, carried, and possessed firearms in relation to the conspiracies, kidnapping, and armed robbery charged in Counts One, Three, Four, and Six, and that they brandished those firearms in connection with those crimes.

4. Do any of you believe you have personal knowledge of the events charged in the Indictment as I have described them?

Nature of the Charges

5. As you can tell, during the trial, you will hear evidence concerning violent crimes, specifically, kidnappings and armed robberies. Would the nature of these crimes make it difficult for any of you to render a fair verdict? Do any of you feel that you could not decide such charges fairly and impartially?

6. During the trial, you will hear evidence concerning the use and possession of firearms. Would the fact that the charges involve firearms make it difficult for any of you to render a fair verdict? Do any of you feel that you could not decide fairly and impartially a case involving such charges?

7. Do any of you have any opinion about the

enforcement of the federal firearms laws that might prevent you from being fair and impartial in this case?

8. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed to testify in any criminal case?

9. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury? Have you, or any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

10. Have you, or has any member of your family, any associate, or close friend, ever been charged with any crime, apart from minor traffic infractions?

11. **[If there are any affirmative answers to question No. 10]** Do you feel that you [your family member, close friend] were treated fairly by law enforcement and the court system? Will anything about that experience affect your ability to be fair and impartial in this case?

12. Have you, or have any of your relatives, associates, or close friends, ever been the subject of any investigation or accusation by any federal or state grand jury, or by any congressional committee?

13. Have you, or any of your close friends or relatives, ever been a victim of a crime? [If there are any affirmative answers to this question, the Government respectfully

requests that the Court inquire, at the bench or in the robing room, into the circumstances of each crime.]

Knowledge of the Trial Participants

14. The Government requests that the Court ask its standard questions about whether the jurors know or have had any dealings with any of the defendants, the defense attorneys, or the Government's attorneys.

Law Enforcement Witnesses

15. The witnesses in this case will include law enforcement personnel. You should judge their credibility just as you would that of any other witness. In evaluating whether you think they are telling the truth, you should neither reward them nor penalize them just because they are police or other law enforcement officers. Would any of you be more likely to believe or disbelieve a witness merely because the witness is a law enforcement officer?

Relationship with Government

16. Do any of you know, or have any association - professional, business, or social, direct or indirect - with any member of the staff of the United States Attorney's Office for the Southern District of New York or the Federal Bureau of Investigation? Are you, or is any member of your family employed by any law enforcement agency, whether federal, state, or local?

17. Do any of you have any bias, prejudice, or other feelings for or against the United States Attorney's Office or the

FBI? Has anyone, either through any experience you have had or anything you have seen or read, developed any bias or prejudice for or against the United States Attorney's Office, the FBI, or any other law enforcement agency?

18. Have you, or has any member of your family, either as an individual, or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the Internal Revenue Service? Have any of you had any legal, financial, or other interest in any such legal action or dispute, or its outcome? In particular, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

Accomplice Witnesses

19. You will hear testimony in this case from accomplice witnesses, that is, witnesses who at one time were involved in illegal activity, but who have now pled guilty to various crimes and are testifying on behalf of the Government pursuant to a cooperation agreement, in the hopes of getting a reduced sentence. I instruct you that the use of such accomplice witnesses is perfectly legal and is often a necessary law enforcement tool. Do any of you have any experience with or feelings about the use of accomplice witnesses generally, or the use of evidence or information obtained from accomplice witnesses, that would make it difficult for you to render a fair

and impartial verdict if you heard testimony from an accomplice witness?

Relevant Names and Locations

20. I will now read a list of names of individuals who may be mentioned during the trial, or who may be witnesses in this case:

[List of names to be provided]

21. Do any of you know any of these people? Have you had any dealings, either directly or indirectly, with any of these them?

22. I will now read a list of locations that may be mentioned during the trial:

[List of locations to be provided]

23. Do any of you live at any of these locations or have close friends or family who do?

Prior Jury Service

24. Have any of you, at any time, served as a member of a grand jury, whether in federal, state, county, or city court? If so, when and where did you serve?

25. Have any of you ever served as a trial juror in any court? If so, when, and in what court did you serve, and was it a civil or criminal case? What was the nature of the case? Did the jury reach a verdict?

Other Questions

26. Do any of you have problems with your hearing or vision that would prevent you from giving full attention to all of the evidence at this trial?

27. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

28. Do any of you have any difficulty reading or understanding English in any degree?

Function of the Court and Jury

29. The function of the jury is to decide questions of fact. You are the sole judges of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finders. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty as charged in the Indictment, based on the law as I give it to you. Do any of you have any bias or prejudice that might prevent or hinder you from accepting the instructions of law that I will give you in this case?

30. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that

the possible punishment must not enter into your deliberations as to whether the defendants are guilty or not guilty?

31. Will each of you accept the proposition of law that sympathy must not enter into the deliberations of the jurors as to whether the defendant is guilty or not guilty, and that you must use only the evidence produced here in Court to make that determination?

32. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established the defendant's guilt beyond a reasonable doubt, you might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

33. Do any of you have any religious, philosophical, or other belief that would make you unable to render a guilty verdict for reasons unrelated to the law or evidence?

34. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, do any of you have the slightest doubt in your mind, for any reason whatsoever, that you will be able to serve conscientiously, fairly, and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?

Jurors' Backgrounds

35. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's family status;
- b. the juror's occupation and educational background;
- c. the general location where the juror currently works;
- d. the period of employment with that employer;
- e. the same information concerning other employment within the last five years;
- f. the same information with respect to the juror's spouse and any working children;
- g. the geographical area in which the juror resides;
- h. what newspapers and magazines the juror reads and how often; and
- i. what television shows the juror watches.

Requested Instruction Following Empanelment of the Jury

36. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family and your friends. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you

should immediately report such attempt to me through my courtroom deputy. In this regard, let me explain to you that the attorneys, the defendants, and the witnesses in the case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so. In this connection, when the Court is in recess, please stay either in the jury room or somewhere outside the courtroom. Please do not wait in the courtroom.

Dated: White Plains, New York
May 27, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney

By: _____
Nola B. Heller
Michael A. Levy
Assistant United States Attorneys
(212) 637-2631, -2346

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2008, I caused a copy of the foregoing Government's Proposed Examination of Prospective Jurors to be served, by ECF, on all counsel of record.

Dated: New York, New York
May 27, 2008

_____/s/_____
Nola B. Heller